IN THE COURT OF APPEALS OF IOWA

No. 22-1967
Filed February 21, 2024

DANIEL MURILLO,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Samantha Gronewald, Judge.

A convicted sex offender appeals the denial of his application to modify sex offender registry requirements. **AFFIRMED.**

Jesse A. Macro, Jr. of Macro Law, LLP, Des Moines, for appellant.

Brenna Bird, Attorney General, and Nicholas E. Siefert, Assistant Attorney General, for appellee State.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

BADDING, Judge.

Daniel Murillo, a convicted sex offender with shifting stories about the facts of his crime, appeals the denial of his application under Iowa Code section 692A.128 (2022) to modify his requirement to register as a sex offender. He claims the district court erred in finding that he did not successfully complete sex offender treatment and abused its discretion in determining he was still an ongoing risk to the community. We affirm.

Even though he pled guilty to third-degree sexual abuse in 2005, Murillo refused to admit the facts of his crime when it came time for sex offender treatment in prison. Murillo changed his tune after he learned that he would be "boot[ed]" from the program and have his time in prison "doubled."[1] So Murillo made the admissions, completed treatment, and discharged his prison sentence in 2009. He has been required to register as a sex offender ever since.[2]

In June 2022, Murillo applied to modify his registration requirement. Section 692A.128 sets forth "threshold criteria" for modifying sex offender registry

[1] Murillo was sentenced to an indeterminate term of ten years in prison. His failure to complete sex offender treatment would not have doubled that sentence, as Murillo expressed, but instead made him ineligible for a sentence reduction. *See* Iowa Code § 903A.2(1)(a) (2009) ("[A]n inmate required to participate in a sex offender treatment program shall not be eligible for a reduction of sentence unless the inmate participates in and completes a sex offender treatment program established by the director.").

[2] Based on the law as it stood when Murillo was sentenced, he would have been required to register as a sex offender for ten years. *See* Iowa Code § 692A.2(1) (2005). However, chapter 692A was later amended to classify Murillo's conviction as an aggravated offense, for which registration for life is required. *See* 2009 Iowa Acts ch. 119, §§ 1(1)(a)(3), 6(4) (codified as amended at Iowa Code §§ 692A.101(1)(a)(3), .106(5) (2022)); *see also State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997) (concluding constitutional ex post facto concerns are not implicated by chapter 692A because it is not punitive).

requirements. *Fortune v. State*, 957 N.W.2d 696, 703 (Iowa 2021). One of those criteria is that the "sex offender has successfully completed all sex offender treatment programs that have been required." Iowa Code § 692A.128(2)(b). Another is completion of a "validated risk assessment approved by the department of corrections" classifying the sex offender "as a low risk to reoffend." *Id.* § 692A.128(2)(c). "We review the district court's threshold determination for errors of law," examining whether the court's findings are supported by substantial evidence. *State v. Buck*, No. 21-0129, 2022 WL 951067, at *1 (Iowa Ct. App. Mar. 30, 2022).

Psychologist Dr. Anthony Tatman performed a "sex offender registry modification evaluation" for the fifth judicial district department of correctional services. During his interview with Dr. Tatman, Murillo once again denied sexually abusing the victim of his crime. He repeatedly stated "that he did not rape the victim, but rather had consensual sex." Dr. Tatman noted that Murillo "confirmed during our conversation that, although he was innocent of the crime," he only made admissions during treatment "to keep his time from getting 'doubled.'" Despite those initial denials and "two inconclusive history polygraph examinations" during his treatment, Murillo received a "certificate of completion" for "The Mt. Pleasant Correctional Facility Track 3—Sex Offender Treatment Program." That certificate and Dr. Tatman's evaluation were attached to Murillo's modification application.

Although Murillo's scores on the risk assessments performed by Dr. Tatman were "consistent with a 'low risk' determination," Dr. Tatman questioned whether Murillo "actually completed treatment or not":

> This criteria of Examinee needing to "successfully" complete all sex offender treatment that is required is difficult to answer. Based on information obtained in this evaluation Examinee admitted his offense to the Court, then denied the allegations of sexual abuse made against him when he was incarcerated, then admitted to engaging in the behaviors outlined in the police report to keep his earned time, and now again has recanted this admission. He stated that he only took the plea (admitting guilt in court) in fear that he would go to prison for life,[3] and then admitted again in prison in order to keep his earn timed, essentially lying to the court and his treatment facilitators.

The State resisted modification, and an evidentiary hearing was held. At the hearing, Murillo testified that he completed sex offender treatment while in prison, stating the only way to do so is by admitting all the allegations in the initial police report, "otherwise they will boot you out" and you have to stay in prison longer. When asked about his lack of consistency in accepting responsibility for his crime, Murillo explained that he has always struggled with admitting his guilt, "[e]ven to this day." Yet he testified that he was taking "full responsibility" for the crime—"It was totally my fault." On cross-examination, Murillo agreed with the State that "being honest . . . is an important part of succeeding in treatment."

Following briefing from the parties, the district court denied modification. The court determined that Murillo did not successfully complete required sex offender treatment because of his insincere admissions of guilt. Murillo challenges this conclusion, arguing "[t]here is no proof he did not complete his treatment." In support of this argument, Murillo points to his certificate of completion of treatment

[3] Along with the third-degree sexual abuse charge, Murillo was also charged with first-degree kidnapping. The kidnapping charge was dismissed as part of Murillo's agreement to plead guilty to sexual abuse.

and testimony that he completed treatment requirements.[4] But Murillo skips over the operative language of the statutory requirement—"successfully." *See* Iowa Code § 692A.128(2)(b). Completion of treatment, as shown by a certificate of completion, does not necessarily equate to *successful* completion of treatment. Successful completion of sex-offender treatment "generally requires that an offender confront his responsibility for past offenses." *Fortune*, 957 N.W.2d at 709. There is substantial evidence that Murillo did not do so.

In his evaluation, Dr. Tatman focused on the statutory language requiring successful treatment. He concluded that although Murillo "has a Certificate of Completion . . . , this completion was done under false pretenses that Examinee was admitting his crime. If Examinee did not lie, and maintained his belief that he was innocent as he does now, he would not have completed treatment." These conclusions are supported by Murillo's statements to Dr. Tatman during the evaluation, which Murillo agreed at the hearing were accurately reported.

The evidence that Murillo was simply "going through the motions" to complete treatment and Dr. Tatman's reservations about successful completion "constitute substantial evidence in support of the determination that [Murillo] failed to *successfully* complete the sex offender treatment program." *State v. Wallace*, No. 15-1448, 2016 WL 6636681, at *3 (Iowa Ct. App. Nov. 9, 2016) (emphasis added). The court was not required to accept the construct that just because

[4] Murillo also submits that the evaluator could not have categorized him as a low risk to reoffend if he did not complete treatment. But the evaluator didn't make that determination, the risk-assessment tools did. Those tools are objective actuarial risk instruments, and Murillo presented no evidence to show that Dr. Tatman's subjective concerns about his acceptance of responsibility would alter the risk categorizations.

Murillo completed treatment and was released from prison, the completion was successful. *See id.* We accordingly affirm the court's determination that Murillo did "not meet the eligibility requirements set forth in Iowa Code section 692A.128(2)."

In a "belt-and-suspenders approach," the district court also concluded that Murillo failed the second step in the modification analysis. *See Brown v. State*, No. 21-0785, 2022 WL 3420890, at *3 (Iowa Ct. App. Aug. 17, 2022). That step involves the district court considering "the statutory factors and any other factors that the district court finds relevant to the modification issue" to determine whether, "in its discretion, the registration requirements should be modified." *Fortune*, 957 N.W.2d at 705. We review this determination for an abuse of discretion. *Id.* "[A] district court commits an abuse of discretion when it fails to consider a relevant factor, or considers an improper or irrelevant factor, on the question of whether the ongoing risks of danger from the sex offender justifies continuation of the registration requirements." *Id.* at 707. An abuse of discretion can also be found "where there is a clear error of judgment." *Id.*

Murillo seems to argue that because some of the factors the court considered—his completion of treatment, ongoing registration and residence in the community for several years without issue, and low risk-assessment scores—weighed in favor of granting his application, then the court must have made a clear error in judgment. As discussed above, there was substantial evidence to support the court's conclusion that Murillo did not successfully complete treatment. While the court considered the positive factors in favor of modification, it found they were outweighed by Murillo's refusal to accept responsibility for his actions except when

it furthered his agenda. Murillo's lack of remorse and admitted "struggles" to accept responsibility "[e]ven to this day" were proper bases for the court to conclude he was an "ongoing risk to the community" and deny modification. *See State v. Seidell*, No. 21-0493, 2022 WL 951002, at *3–4 (Iowa Ct. App. Mar. 30, 2022). We find no clear error of judgment in the court's decision.

Finding no legal error or abuse of discretion, we affirm the district court's denial of Murillo's application to modify his sex offender registry requirements.

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
22-1967	Murillo v. State

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